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AUG 07 2006

Atty. Docket No.: 412479

REMARKS

Claims 1-4 remain pending in the instant application (hereinafter, "the '576 Application"), and are amended herewith, for clarity. It is believed that the following remarks and the above-presented amendments attend to all issues presented in the Office Action dated 05 April 2006, and the subsequent Supplemental Office Action received 18 May 2006. Headings presented below reflect the order of issues presented in the aforementioned Office Action.

1. Information Disclosure Statement

We thank the Examiner for indicating that the IDS filed 22 September 2003 has been considered and made of record. We also thank the Examiner for providing a Supplemental Office Communication, indicating the length of the shortened statutory period for response to the pending Office Action.

2-3. Claim Rejections – 35 U.S.C. § 103

Before specifically discussing the obviousness-type rejection of claims 1-4, we provide the following brief summary of Applicant's invention, as compared with the cited references.

The '576 Application discloses a portable audio system that "allows simultaneous listening and/or audio communication by multiple individuals to a personal electronic device such as a CD player, tape player, radio, or cellular or wireless telephone. The audio system includes a personal electronic device, a transmitter in wireless communication with a plurality of wearable audio speakers and a power supply." '576 Application, Abstract. For example, a single personal electronic device (e.g., a CD player, a radio or a cellular telephone) includes a transmitter that transmits audio simultaneously to a plurality of speakers that are worn by more than one individual, at the same time. The speakers are powered by individually-worn power supplies. See p. 2, ¶[0008]; FIG. 1.

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This differs from cited U.S. Patent No. 6,785,539 (hereinafter, "Hale"), which discloses wireless triggering of portable devices. As described in Hale, each user or guest carries a portable device that includes speakers and memory with audio, text, graphics and/or visual content. The portable devices are triggered to play audio or graphical content when coming into range of a transmitter, which sends a specific code to the devices:

"Guests carry portable devices loaded with content information such as location descriptions, sign contents, show content, alternate language content, event times, etc. Content may be audio, graphical, or a combination of both.

When the device is within range of a transmitter sending codes, the device should be capable of receiving codes. Upon receiving a code, the device searches its memory for appropriate content, tests any logic constraints, and presents content to the user." Hale, col. 2, lines 34-42.

This is different from Applicant's single personal, portable electronic audio entertainment device in communication with a plurality of wearable speakers being worn by a plurality of individuals. Compare, for example, Applicant's FIG. 1 with Hale's FIG. 3. Applicant's FIG. 1 shows a personal entertainment device 10 with transmitter 20, "**for transmitting audio simultaneously to a plurality of wearable audio speakers 30...** and a power supply 40 being worn by more than one individual at the same time." '576 Application p. 2, ¶[0008], emphasis added. On the other hand, Hale's FIG. 3 shows theater patrons with portable electronic devices 14. "The portable device receives **time codes** from a wireless transmitter 10 located in the theater 30. **Captioning text for the entire theater presentation is stored in the memory of device 14.** Portable device 14 receives the codes sent by the transmitter, extracts the current show time, and displays the appropriate text in time with the show." Hale col. 5, lines 23-28, emphasis added.

Cited Patent Application Publication No. US 2005/0201585 A1 (hereinafter, "Jannard") also differs from the '576 Application. Jannard recites a wireless interactive

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headset. The headset either includes or communicates with a device that provides an audio output signal. See Jannard p. 8, ¶[0132]; p. 12, ¶¶[0166]-[0167]. However, Jannard does not teach that one electronic device may be utilized (e.g., listened to) by multiple individuals through multiple speakers. It appears that when the device is off-board, each wearer of Jannard's headset has a separate off-board device, which may in turn receive signals from a remote source such as satellite radio or an ISP. For example, Jannard recites, "In many applications, the source electronics B will be carried by the wearer, such as on a belt clip, pocket, purse, backpack, shoe, integrated with "smart" clothing, or the like." Jannard p. 15, ¶[0209]. In cases where the source electronics B are not carried by a user, it still appears that each headset communicates with a separate off-board device. Indeed, Jannard teaches personal programming and voice-control of a device by a user, e.g., "...a source device such as a cellular phone, that has a speech recognition engine and that is properly trained to recognize the voice of *the* user." Jannard p. 22, ¶[0277]; see also p. 25, ¶¶ [0308]-[0309]. But Jannard does not provide any way or means for differentiating between users or for recognizing or storing preferences for multiple users. This further suggests a one-to-one relationship between wearers and off-board devices, which differs from Applicant's single personal, portable electronic audio entertainment device that simultaneously transmits to a plurality of speakers that are worn by a plurality of individuals. See, e.g., claims 1-3 of the '576 Application.

Returning now to the specific rejections under 35 U.S.C. §103, for the purpose of the following discussion, the Examiner is respectfully reminded of the basic considerations which apply to obviousness rejections:

When applying 35 U.S.C. §103, the following tenets of patent law must be adhered to:

(A) The claimed invention must be considered as a whole;

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(B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;

(C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and

(D) Reasonable expectation of success is the standard with which obviousness is determined. MPEP §2141.01, *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1134 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

In addition, it is respectfully noted that, to substantiate a *prima facie* case of obviousness, the initial burden rests with the Examiner who must fulfill three requirements. More specifically:

To establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings.

Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The *teaching or suggestion* to make the claimed combination and the *reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure*. (emphasis and formatting added) MPEP § 2143, *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)

Claims 1-4 stand rejected as being unpatentable over U.S. Patent No. 6,785,539 (hereinafter, "Hale") in view of U.S. Patent Publication No. 2005/0201585 (hereinafter,

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"Jannard"). We respectfully disagree, and traverse the rejection of claims 1-4, for at least the following reasons,

Independent Claim 1: In order to render amended claim 1 *prima facie* obvious, Hale in view of Jannard must teach or suggest all of the elements of the claim. We submit that Hale in view of Jannard does not teach or suggest each and every limitation of claim 1 "as filed"; however, for clarity and to better describe Applicant's invention, claim 1 is amended to recite a portable audio system, including:

- (a) a single personal, portable electronic audio entertainment device
- (b) a plurality of wearable speakers in communication with said entertainment device, for wearing by a plurality of individuals;
- (c) a plurality of power supplies, each said power supply connected to at least one of said speakers and configured for wearing by each said individual;
- (d) a means for simultaneously transmitting audio from said entertainment device to said wearable speakers; and
- (e) a means for receiving the transmitted audio attached to said wearable speakers.

Hale in view of Jannard also fails to teach or suggest all of the elements of amended claim 1. For example, the combined references do not teach or suggest a single, personal, portable electronic audio entertainment device, and means for simultaneously transmitting audio from said device to a plurality of speakers for wearing by a plurality of individuals, the speakers being in communication with the entertainment device, as in claim elements (a), (b) and (d).

As noted in the summary provided above, Hale recites that each guest carries a portable device that contains content information and includes speakers. See, e.g., Hale, col. 2, lines 34-42 and col. 5, lines 23-28, quoted above. Hale does not teach or suggest one device transmitting to a plurality of speakers worn by a plurality of individuals. Also, as recognized by the Examiner, Hale does not teach a means for simultaneously

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transmitting audio from an entertainment device to a plurality of speakers. See Office Action p. 3, lines 1-2.

Jannard also fails to teach at least amended claim 1 elements (a), (b) and (d). We must respectfully disagree with the Examiner's statement that Jannard teaches a means for simultaneously transmitting audio from an entertainment device to a plurality of speakers. Jannard nowhere teaches a single device transmitting audio to a plurality of speakers worn by a plurality of individuals. Rather, in the passage referenced by the Examiner, Jannard describes both "a half duplex mode" and "a full duplex mode." These are terms of art, which do not relate to transmission to a plurality of receiving devices (e.g., speakers), but rather, to communication in a plurality of *directions* (e.g., back and forth, or transmitting and receiving). "A *half-duplex* system allows communications in both directions, but only one direction at a time (not simultaneously)...A *full-duplex* system allows communication in both directions, and unlike *half-duplex* allows this to happen simultaneously. All wire telephone networks are *full duplex* as they allow both callers to speak and be heard at the same time." "Duplex (telecommunications)," Wikipedia, http://en.wikipedia.org/wiki/Duplex_%28telecommunications%29.

Jannard notes that half duplex mode allows either transmission or receipt of signals at any one moment, but not both transmission and receipt at the same time. Although typographical errors in the cited Jannard passage somewhat obscure the meaning of "full duplex", we contend that the teaching of "a full duplex mode in which simultaneous [*sic.*] of audio signals are received and transmitted to the speakers 14, 14A, 14B, 14C, 14D, 14E, 16, 16A, 16B, 16C, 16D, 16E" suggests the accepted meaning of the term. See Jannard pp. 20-21, ¶[0268].

Should the Examiner interpret from the above passage that Jannard teaches simultaneous transmission to a plurality of speakers worn by a plurality of individuals (e.g., speakers 14, 14A, 14B, 14C...16, 16A, 16B, 16C...), we note that Jannard specifies that audio devices 10A, 10B, 10C, etc., with respective speakers left and right speak 14A and 16A, 14B and 16B, 14C and 16C, etc., are "modification[s] of the audio device 10,"

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and not separate devices. See Jannard ¶¶[0114], [0201], [0205], [0221] and [0248]. Jannard does not teach or suggest simultaneous transmission of audio to a plurality of speakers worn by a plurality of individuals. As noted in the brief summary provided above, Jannard's voice control and personal programming features suggest transmission between one electronic device and one set of speakers. See Jannard p. 22, ¶[0277]; see also p. 25, ¶¶ [0308]-[0309]. As shown and described in Jannard, each set of speakers is worn by a single person. See, e.g., FIGs. 1-3J, 3M and 6-9, among others.

Jannard's teaching is clearly different from a portable audio system having the following amended claim 1 elements:

- (a) a single personal, portable electronic audio entertainment device with
- (b) a plurality of wearable speakers in communication therewith, for wearing by a plurality of individuals, and including
- (d) a means for simultaneously transmitting audio from said entertainment device to said wearable speakers.

These elements are not taught or suggested by Jannard. As shown above, Hale also fails to teach or suggest these at least these limitations of amended claim 1. The Hale/Jannard combination therefore fails under 35 U.S.C. §103. *Prima facie* obviousness is not established. We therefore respectfully request withdrawal of the rejection of claim 1.

Dependent Claim 2: Courts have ruled that if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Thus, claim 2 is allowable over Hale in view of Jannard, at least because it depends from claim 1. Withdrawal of the Examiner's rejection is respectfully requested.

Independent Claim 3: Like claim 1, claim 3 requires a single personal, portable electronic device (specifically, an audio communication device), a plurality of wearable speakers being worn by a plurality of individuals, and means for simultaneously

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transmitting audio from the communication device to the wearable speakers. As noted above with respect to claim 1, Hale in view of Jannard fails to teach or suggest these claim elements. Claim 3 is allowable for at least this reason. However, claim 3 recites the additional unique limitations of means for receiving audio from said individuals by said communication device. Neither Hale nor Jannard teach or suggest a single communication device that can receive audio from a plurality of individuals wearing a plurality of speakers. We therefore respectfully request withdrawal of the Examiner's rejection under 35 U.S.C. §103.

Claim 4: Claim 4 depends from claim 3, and so benefits from like argument. Furthermore, Hale in view of Jannard does not teach or suggest wireless means for receiving audio at a single communication device, from a plurality of individuals wearing a plurality of speakers. Withdrawal of the §103 rejection is respectfully requested.

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It is believed that this Amendment and Response addresses all points raised by the Examiner in the Office Action dated 05 April 2006. Applicant respectfully solicits a Notice of Allowance for claims 1-4 of the '576 Application. If any issues remain outstanding, the Examiner is encouraged to telephone the undersigned attorney.

The Supplemental Office Communication received in the '576 Application was dated 18 May 2006, and indicated that this Response was due "3 MONTH(S) OR THIRTY (30 DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF [THE] COMMUNICATION." See Office Action Summary, Supplemental Office Communication dated 5/18/2006. This Amendment and Response is submitted within 3 months of the May 18, 2006 mailing date of the Supplemental Action; therefore, no fees are believed due with this submission. However, if any fees are deemed necessary in connection with this Amendment and Response, the Commissioner is hereby authorized to charge Deposit Account No. 12-0600.

Respectfully submitted,

8/7/06

Date

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